

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/10/18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TREASURE CHEST THEMED VALUE MAIL, INC.,

Plaintiff,

- against -

DAVID MORRIS INTERNATIONAL, INC.,

Defendant.
-----X

ORDER

17 Civ. 1 (NRB)

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Plaintiff seeks \$95,000¹ pursuant to a contract whereby it agreed to advertise defendant's vacation packages to its list of prospective customers. Defendant, having not received a single booking from the mailing, resisted payment on the grounds that plaintiff had misrepresented the nature and quality of the prospective customer list.

As we have explained from the very beginning of this case, it is plaintiff's burden, in order to prevail on its claims, to establish the value of the service it provided, i.e., the list to which the advertisements were sent. Given the parties' apparent inability to negotiate a method of evaluating the efficacy (i.e., targeting/detail), if any, of plaintiff's list, we scheduled a

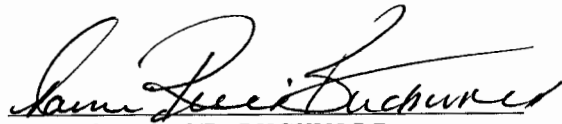
¹ At the initial pretrial conference, defense counsel represented that \$14,000 of the \$95,000 due had been paid, leaving an \$81,000 balance.

conference for April 17, 2018. Because of the volume of the list, plaintiff requested leave to bring it to court in electronic form, to which we agreed. Defendant apparently requested that plaintiff bring 2 pages in hard copy. Amazingly, plaintiff refused.

Enough. The Court directs, under pain of contempt, that plaintiff's counsel bring to court the list(s) plaintiff actually employed pursuant to the contract and bring 10 hard copy pages, selected as follows: starting at page 5 the 20th page thereafter until 10 hard copies are available for the Court's inspection.²

SO ORDERED

Dated: New York, New York
April 10, 2018


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

² The Clerk of the Court is respectfully directed to terminate docket number 32.